

AFD Ep 336 Links and Notes - Brady Lists

- Massachusetts courts recently urged them to start making those lists public:
<https://www.wbur.org/news/2020/09/25/rollins-suffolk-da-police-credibility-brady>
 - *Five DA offices [in MA] said they do not keep any list at all. That goes against recent guidance from the Massachusetts Supreme Judicial Court. In a decision supporting a lower court's ruling to turn over potentially damaging information about police witnesses in a case out of Fall River, the justices wrote that while they don't have the authority to require the Attorney General and every district attorney's office to maintain a disclosure list, "we strongly recommend that they do."*
 - <https://d279m997dpfwgl.cloudfront.net/wp/2020/09/brady-list-sjc.pdf>
 - *Discussion. 1. Disclosure of Brady information to other defendants. Under the due process clause of the Fourteenth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights, a prosecutor must disclose exculpatory information to a defendant that is material either to guilt or punishment. See Brady, 373 U.S. at 87; Committee for Pub. Counsel Servs. v. Attorney Gen., 480 Mass. 700, 731 (2018) (CPCS). "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility falls within this general rule." Giglio, 405 U.S. at 154, quoting Napue v. Illinois, 360 U.S. 264, 269 (1959). See Commonwealth v. Hill, 432 Mass. 704, 715 (2000), quoting Commonwealth v. Collins, 386 Mass. 1, 8 (1982) ("Evidence tending to impeach the credibility of a key prosecution witness is clearly exculpatory"). Therefore, in the parlance of the criminal justice bar, Giglio information is Brady information: "[t]he Brady obligation comprehends evidence which provides some significant aid to the defendant's case, whether it furnishes corroboration of the defendant's story, calls into question a material, although not indispensable, element of the prosecution's version of the events, or challenges the credibility of a key prosecution witness." Commonwealth v. Ellison, 376 Mass. 1, 22 (1978).*
 - *Middlesex DA Marian Ryan has 124 officers from 37 different departments on her Brady list, as of August. Ryan said her office, in addition to tracking arrests, prosecutions and media reports, proactively asks police departments to notify it of internal affairs investigations. In its review of the Middlesex list, WBUR discovered cases involving officers that were never made public, including a Somerville police officer convicted of stealing \$83,000 from a police union account and two other officers suspected of embezzling union funds.*
 - *Suffolk's list doesn't appear to have relied as much on internal affairs information from the Boston police or other departments. Most internal affairs information is sourced to The Boston Globe. Defense attorneys said the list seems under-inclusive, missing several pending and completed internal investigations of officers.*
 - *DA Rachael Rollins of Suffolk County (Boston and several other communities): "When the credibility of law enforcement is in question, all participants in the system — and the public — should be aware of that," she said. "The people of Suffolk County deserve to know that the public officials they rely on for their safety are truly invested in it. Anything less is a betrayal of their trust and our obligation to serve." **Rollins' office originally did not want to make their officer disclosure list public.** When WBUR initially requested the list under the state's public records law, the DA declined to provide it, citing the attorney work*

product exemption. WBUR appealed that decision in August to the state supervisor of records. The supervisor sided with WBUR two weeks later, ordering the the DA's office to provide the requested material "as soon as practicable." Responding to WBUR's reporting in an interview with The Boston Globe's editorial board, Rollins committed to making the full list public by Friday. **Rollins' office released the list just before 9 p.m. Friday night...**

- <https://www.wbur.org/news/2020/08/18/police-brady-lists-middlesex-district-attorney>
 - "Police officer honesty during their testimony — when they're writing police reports — is really the irreducible core of our criminal system of justice," said Randy Gioia, who oversees the public defender division of the Committee for Public Counsel Services. Gioia said he and many other defense attorneys believe officers who previously have been disciplined for lying are routinely allowed to testify as state witnesses because prosecutors fail to track police misconduct. "If you don't have that list, you're basically starting from scratch in every case, and you're not going to uncover [anything] unless it's the most obvious, the high-profile cases," he explained. "You're not going to uncover the instances of dishonesty, or misconduct of another type, like police brutality."
 - Under the Brady doctrine and as court representatives of the state, prosecutors have a two-pronged duty: first to find any damaging information about their own witnesses they may need to disclose to defense, and then to try to win their case, which may mean using those same witnesses.
 - For example, court disclosures kept by the Middlesex DA's office and obtained by WBUR show Westford Officer William Luppold, Jr. was the subject of three internal affairs investigations between 1997 and 2016: one after he was "found to have been untruthful" about a civilian in his cruiser during an active investigation; one after he violated police rules around the handling of evidence; and one after money went missing from the station's evidence room. The department found Luppold guilty of the first two; he resigned in 2017 during the third investigation, after 29 years on the force.
 - of the 124 officers on the [Middlesex County] list, 66 were confirmed to still be employed by their departments.
 - DA Ryan said the conduct of officers on the list has led her to drop several cases entirely; as the Lowell Sun first reported last March, Ryan dropped over a dozen cases after officers in the Lowell special investigations unit were caught falsifying records related to a drug bust, and concealing a wiretap.
- <https://www.usatoday.com/in-depth/news/investigations/2019/10/14/brady-lists-police-officers-dishonest-corrupt-still-testify-investigation-database/2233386001/>
 - Thousands of people have faced criminal charges or gone to prison based in part on testimony from law enforcement officers deemed to have credibility problems by their bosses or by prosecutors.
 - At least 300 prosecutors' offices across the nation are not taking steps necessary to comply with the Supreme Court mandates.
 - In Miami-Dade County, internal training presentations obtained by USA TODAY show prosecutors being taught legal tactics to avoid disclosing officers' histories. The documents say the burden of proving they covered up a questionable officer's history is on the defense. The end of the slideshow casts disclosure as a game of strategy between prosecutors and the defense.
 - USA TODAY reviewed discipline files for Little Rock police officers going back 15 years, then compared them with court records. The analysis found officers who the department determined lied or committed crimes were witnesses in at least 4,000 cases.

- Since 1988, data from the National Registry of Exonerations shows 987 people have been convicted, then exonerated in cases that involved a combination of official misconduct by prosecutors and perjury or a false report by police and other witnesses. They spent an average of 12 years each behind bars.
- [Side note for the notes but not the episode because it's about a different issue] <https://www.usatoday.com/in-depth/news/2019/05/23/police-brutality-misconduct-california-cop-records-sb-1421/3555785002/> **Even state agencies assigned to oversee law enforcement officers frequently refused to release the reasons why they acted to decertify certain officers – effectively banning them from the profession in their states. One state, Delaware, wouldn't release the names of officers it has banned at all – making it the only state in the union to deny that request. The state also doesn't report the identity of its decertified officers to the national clearinghouse some police agencies use to screen new hires, effectively hiding that information from potential employers in 49 states.**
- <https://www.criminallegalnews.org/news/2019/apr/12/why-brady-lists-still-dont-work/>
 - even in jurisdictions where Brady lists exist, there are four main obstacles that prevent defendants from exercising their constitutional right to use the information: (1) Investigations concluding that a cop has engaged in misconduct may happen very slowly, if at all; (2) When a crooked cop gets a job in a different jurisdiction, the Brady list doesn't follow him/her; (3) Police departments block prosecutors' access to information — sometimes state laws prohibit access; and (4) Often the prosecutors who do obtain credibility-damaging information refuse to turn over the Brady list to defense attorneys.
- Named for Brady v. Maryland (1963) https://en.wikipedia.org/wiki/Brady_v._Maryland which was a much broader US Supreme Court ruling requiring prosecutors to turn over all their evidence to defendants (especially exculpatory evidence or witness impeachment factors) -- this is known as Brady Disclosure
- 2 men on trial for murder (Brady and Boblit), Brady's defense was that Boblit carried out murder on his own. Prosecution withheld statement from Boblit confirming this. Brady was sentenced to death. Maryland Court of Appeals affirmed the conviction, but agreed to retrial for sentencing. Brady's defense hoped to get conviction overturned by the Supreme Court. Supreme Court upheld Maryland Court of Appeal's ruling. Brady was resentenced to life imprisonment, and later paroled.
- https://en.wikipedia.org/wiki/Brady_disclosure but it is extremely difficult to enforce on prosecutor offices and it's hard for defense attorneys to catch disclosure violations if they don't already know the evidence exists
 - *Examples:*
 - *The prosecutor must disclose an agreement not to prosecute a witness in exchange for the witness's testimony.^[3]*
 - *The prosecutor must disclose leniency (or preferential treatment) agreements made with witnesses in exchange for testimony.^[4]*
 - *The prosecutor must disclose [exculpatory evidence](#) known only to the police. That is, the prosecutor has a duty to reach out to the police and establish regular procedures by which the police inform the prosecutor's office of anything that tends to prove the innocence of the defendant.^[5] Not all exculpatory evidence is required to be disclosed by Brady and its progeny; only evidence that is "material to guilt or punishment" must be disclosed because its disclosure would create a reasonable probability of changing the outcome of the proceeding.^[6] The prosecutor is not obligated to personally review police files in search of exculpatory information when the defendant asks for it, but to allow the defense*

reasonable access.^[7] The Supreme Court observed in *Strickler v. Greene*, "Thus the term 'Brady violation' is sometimes used to refer to any breach of the broad obligation to disclose exculpatory evidence – that is, to any suppression of so-called 'Brady material' – although strictly speaking, there is never a real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict."^{[8][9]}

- The prosecutor must disclose arrest photographs of the defendant when those photos do not match the victim's description.^[10]
- Some state systems have expansively defined Brady material to include many other items, including for example any documents which might reflect negatively on a witness's credibility.^[11]
- Police officers who have been dishonest are sometimes referred to as "Brady cops." Because of the Brady ruling, prosecutors are required to notify defendants and their attorneys whenever a law enforcement official involved in their case has a sustained record for knowingly lying in an official capacity.^[12] The growing use of Brady, both in the federal and state sectors, is one of the most important changes affecting police officers' employment.^[13]
- https://www.idahopress.com/news/local/2c-prosecutors-know-how-many-police-officers-may-have-made-false-statements-in-the-past/article_d4a1468f-3758-5d51-a5e5-75014c2ef4b0.html
 - Software that doesn't lend itself to easy keyword searches add another layer of difficulty in answering requests for information on Brady disclosures. Ada County Prosecutor's office needs to answer for this difficulty.
- <https://www.idahostatesman.com/article232323492.html>
 - Ex-BPD cop lied under oath in a child custody case, and used police records inappropriately to harass her neighbor's boyfriend. She was a witness in 47 cases. In 19 cases researched by the Statesman, most of the defendants pleaded guilty (have we talked about how guilty pleas are often made under duress?)